



Virginia Indian Advisory Board

Joint Board Meeting with Recognition Workgroup

Wednesday, December 21, 2022

4:00 pm – 6:00pm

Mechanicsville Branch Library
7461 Sherwood Crossing Pl,
Mechanicsville, VA 23111

The meeting of the Virginia Indian Advisory Board Workgroup was held in-person with a quorum present.

Board members attending:

Chair Brandon Custalow
Cami Adkins
Dr. Ashley Spivey
Julie Langan
Dr. Gregg Kimball
Young Brinson (virtual)

Recognition Workgroup members attending:

Dr. Buck Woodard
Dr. Gregory Smithers
Pamela Ross
Dr. Brad Hatch (virtual)
Jean Kelley (virtual)

Gloria Senecal and Jenna Moon from the Secretary of the Commonwealth's office attended virtually.

I. Welcome

VIAB Chair Brandon Custalow welcomed Board members, workgroup members, representatives of the Secretary of the Commonwealth's office, members of the Wolf Creek Indian Tribe and counsel, and guests.

II. Call to Order

VIAB Chair Brandon Custalow called the meeting to order at 4:14 pm.



III. Approval of Minutes and Agenda

Chair Custalow asked if anyone had questions about the minutes of the November meeting that had been distributed electronically. Dr. Spivey moved that the minutes be approved and Ms. Langan seconded the motion. The minutes were approved unanimously. Chair Custalow asked if anyone had changes to the proposed agenda. Hearing none, Ms. Langan moved approval of the agenda; the motion was seconded by Dr. Kimball and approved unanimously.

IV. Presentation and Recommendation by VIAB Workgroup on The Wolf Creek Cherokee Tribes Petition for State Recognition

Dr. Woodard, chair of the Recognition Workgroup, opened the presentation and set some groundwork with the Board. It was decided that Board questions would be fielded after the presentation of each criteria. VIAB Chair Custalow noted that comments from the public would be part of the Public Comment section of the agenda. Dr. Woodard then turned the presentation over to Dr. Hatch who presented Criteria 1.

NOTE from Dr. Kimball: The presentations by Workgroup members closely followed the outlines presented visually in the corresponding presentation slides and the Workgroup report. Because the PowerPoint presentation and report are available to the Board and Petitioners, these notes primarily focus on the questions from Board members and the Workgroup's responses to those questions.

Criteria 1

Dr. Hatch presented criteria 1. He summarized the evidence presented by the Petitioner including documents such as treaties, texts of historical markers, and archeological studies. As the responses to the Board's questions suggest, the split vote on this criterion came down to different interpretations of the evidence regarding settlement. The Workgroup voted three to two that the Petitioners satisfied the criteria.

Dr. Kimball asked the Workgroup members if the archeology is conclusive regarding permanent settlements of Cherokee within the current political boundaries of the Commonwealth of Virginia.

Dr. Hatch suggested a term used by his professor: the evidence is "provocative" but not conclusive. He noted archeological evidence of buildings and similarities in burial practices.

Dr. Woodard further stated that the Cherokee and Creek nations were created by the process of colonialism; the archeological remains are from ancestor populations.

Dr. Smithers believes that the archeological evidence in what is now southwest Virginia is indicative of activity within buffer zones where tribes would construct shelter for hunting. He also noted that the treaty of 1768 didn't use the term "Cherokee." Town identities came in the chiefdom era of the early colonial period.



Dr. Spivey asked if there was a documented direct connection between these historical groups and the Petitioners? Answer: "No."

Dr. Woodard said that he interpreted this criterion as a simply a question of "jurisdiction"; was the tribe in the current political boundaries of the Commonwealth of Virginia? Dr. Smithers noted that the Overland Cherokee are well documented as is their ancestry and wondered why the Petitioners provided no direct connection in the evidence submitted.

Criteria 2

Dr. Smithers presented criteria 2. Most of the evidence for this criterion was based on self-identification and some of it is retroactive. The Petitioners submitted amended birth certificates, photographs, and affidavits. Most affidavits were post-2000 and most from non-native people as well as from institutions. While one might suggest that the Racial Integrity Act and other state actions might explain this lack of earlier documentation, the Petitioners did not document such. The Workgroup's vote was unanimous for the Petitioners mainly because the criteria as worded did not define a clear length of time.

Dr. Spivey suggested that the Board address and clarify this criterion for the future. In the federal process this is not a "stand alone" criteria but rather linked to evidence of a historical tribe.

Dr. Kimball wondered why other Virginia tribes can provide archival documentation for their institutions and culture during the era of Eugenics and the Wolf Creek Tribe cannot. He noted the example of school records.

Dr. Woodard replied that some current tribes do not have school records either.

Ms. Adkins asked when the birth certificates were amended. Answer: In the late 20th century.

Chair Custalow followed up, asking is this a Cherokee identity or a Wolf Creek Cherokee identity? Dr. Smithers suggested that it all goes back to self-identification.

Ms. Brinson commented that recognition from the Virginia's tribes should outweigh recognition by non-indigenous people.

Criteria 3

Dr. Woodard presented criteria 3. He noted that the Petitioners could demonstrate geographical clustering of the Tribe's family over time but not indigeneity. He discussed the applications for inclusion on the rolls for the Eastern Cherokee compiled in the early twentieth century. Out of nine applications provided as evidence by the Petitioners, all were rejected. The Workgroup voted unanimously that the Petitioners did not meet this criteria.

Ms. Brinson noted that many people applied for membership in the Eastern Cherokee and even if they had some ancestry, they did not meet the standard of being part of that community.



Dr. Woodard added that it is unusual to have an application from a single family. He also noted that the concept of “community” doesn’t necessarily rule out membership by diasporic communities. He noted the settlement of groups of Pamunkey and Mattaponi tribal members in Philadelphia. In contrast to the Wolf Creek Cherokee Tribe, however, these diasporic groups maintained close connections and frequently returned to the “home” tribal community in Virginia and maintained their identity as Indians. The Petitioners, in contrast, did not provide documentation of such.

Chief Custalow suggested that the Board take a five-minute recess given the hour which was agreed upon.

Criteria 4

Ms. Kelley presented the report on criteria four. She suggested that it would be useful if the criteria were more specific in instructing the Petitioner on the nature of the evidence to be submitted and the proper format. The evidence submitted was piecemeal. She did considerable research beyond the Petitioner’s evidence but the additional documentation she discovered uniformly identified their ancestors as white. She also noted that the federal Office of Federal Acknowledgement (OFA) has consistently ruled against single family groups which is the case here. (For example, the Georgia Cherokee.) Ms. Kelley also examined the documentation presented from the Guion Miller Rolls of the Eastern Cherokee. All the applicants cited by the Petitioners were rejected and she found no family connections. She also commented on the claim of a genealogical connection through the Milam line. The problem was that the husband, Milam, had no Cherokee ancestry; the Cherokee ancestry was rather through his wife who was an Adair. The Workgroup was unanimous that the Petitioners did not meet the criteria.

Chair Custalow asked how the Wolf Creek Cherokee applicants are related to Milam? Ms. Kelley responded that it is very distant relation.

Dr. Woodard commended Ms. Kelley for doing extensive research well beyond what the Petitioners submitted.

Criteria 5

Dr. Woodard presented criteria 5 regarding social and cultural cohesion and continuity at least over the course of the twentieth century. He noted that most of the tribe’s community interactions are from 2000 forward. He noted that they moved *en masse* as a group to Washington state and back. While there is evidence of a large kinship group, there is no early evidence of indigenous identity within that group. Likewise, there is almost no evidence of a social, cultural, or civic organization or activity pre-2000. The Workgroup was unanimous that the Petitioners do not meet the criteria.

Chair Custalow noted that the evidence presented was more or less promotional or demonstrative, not evidence of activities, traditions, and crafts within their own community.



Dr. Woodard replied that perhaps the drum group or businesses might qualify, but, again, these are not in evidence pre-2000.

Dr. Smither's agreed with Chair Custalow's observation, noting that their identity is largely "performative."

Criteria 6

Ms. Ross reported on criteria 6, reviewing the types of evidence presented. These include the current tribal rolls, reports, and incorporation papers from the State Corporation Commission. Workgroup members split three to two in favor of the Petitioners based on their interpretation of the criteria. The broader, pro-Petitioner view allows for a self-defined, formal identification. The narrow interpretation would require ties to a historical tribe.

Chair Custalow asked if all members are connected to a specific tribal role? Answer: there is a modern roll but no historical roll.

Conclusion

Dr. Woodard summarized the Workgroup's conclusions and process. He noted that the Workgroup was scrupulous in disregarding outside commentary and influence, filtering such through the Secretary of the Commonwealth's office. He reiterated that they followed the evidence and that the process, in his view, was ethical, transparent, and fair. Ms. Ross noted that the scholars on the Workgroup were generous in helping Petitioners make their case. Board members thanked the Workgroup effusively.

V. Public Comment

Chair Custalow asked for public comment. Mr. Hurd, counsel for the Wolf Creek Cherokee Tribe, stated that while he and his clients do not agree with some of the Workgroup's conclusions, they nevertheless thank them for their service. He stated that he looks forward to presenting the Tribe's case at the next meeting.

.VI. Closing Remarks and Adjournment

Ms. Brinson thought that in the future the Commonwealth might consider another type of recognition that is for individuals of indigenous descent similar to the federal government's programs.

The Board scheduled a meeting with the Petitioners in order for them to respond to the Workgroup's report. The meeting will take place on January 24, 2023, from 4:00-7:00 pm at the Mechanicsville Library.

Mr. Hurd asked that the Petitioners be provided with a copy of Workgroup's report and PowerPoint presentation. The Secretary of the Commonwealth will provide this material to the Petitioners. He also requested that the public radio reporter who was present provide her recording of the meeting to the Petitioners.



Chair Custalow asked for a motion to adjourn which was made by Dr. Spivey, seconded by Ms. Langan, and unanimously approved. The meeting was adjourned at approximately 6:30 pm.